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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GLADYS ROMERO,

Defendant and Appellant.

G049619

(Super. Ct. No. 10CF2917)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Patrick Donahue, Judge. Affirmed.

Thomas E. Robertson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and
Alastair J. Agcaoili, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

A jury convicted defendant Gladys Romero of first degree murder of Juan Gomez (Pen. Code, §§ 187, subd. (a), 189) (all code references are to the Penal Code). The jury found true allegations of three special circumstance enhancements: (1) commission of the murder in the course of a robbery (§ 190.2, subd. (a)(17)(A)); (2) commission of the murder in the course of a burglary (§ 190.2, subd. (a)(17)(G)); and (3) intentional and personal discharge of a firearm causing great bodily injury and death (§ 12022.53, subd. (d)). Before sentencing, the trial court granted the prosecution's motion to dismiss the three enhancements. The trial court sentenced Romero to a prison term of 25 years to life.

On appeal, Romero contends that the trial court erred in denying her motion to suppress evidence of statements she made during a police interview, including her confession to the killing of Gomez. Although she waived her rights under *Miranda v Arizona* (1966) 384 U.S. 436, 475 (*Miranda*), she argues her waiver was invalid because the police detectives who interviewed her "explicitly trivialized" (capitalization & boldface omitted) the importance of the *Miranda* warnings. We conclude the trial court did not err by denying Romero's motion to suppress because the undisputed evidence established that Romero voluntarily, knowingly, and intelligently waived her rights under *Miranda* and the detectives did not trivialize the importance of the *Miranda* warnings. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

On June 5, 2000, Romero and her brother masqueraded as salespeople and entered the apartment of Gomez. They drew loaded guns and ushered Gomez and the other residents of the house into the living room, where they tied and bound their wrists.

Romero and her brother then shot Gomez twice after he had struggled free of his bindings.

After an unsuccessful police investigation, the case went cold for 10 years. Then, in 2010, detectives got a lead and arrested Romero. She was brought into custody and interviewed by police detectives, Cabrera and Fajardo. During the interview, she confessed to killing Gomez.

At the outset of trial, Romero moved to suppress evidence of her postarrest statements made during the police interview. The trial court watched a video recording of the interview and received in evidence as court exhibit No. 1 a DVD of the interview. The trial court denied the motion to suppress on the ground that the detectives did not trivialize the importance of Romero's *Miranda* warnings. During trial, the video recording of Romero's confession to killing Gomez was played for the jury, and the jury found Romero guilty of first degree murder as charged.

THE TRIAL COURT DID NOT ERR BY DENYING ROMERO'S MOTION TO SUPPRESS.

I.

Legal Standards

A defendant may waive his or her rights under *Miranda* as long as his or her waiver is made voluntarily, knowingly, and intelligently. (*Moran v. Burbine* (1986) 475 U.S. 412, 421.) In order for a waiver to be voluntary, knowing, and intelligent, (1) "the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception" and (2) "the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." (*Ibid.*) In applying this two-part test, the court examines the totality of the circumstances. (*Ibid.*)

Evidence of police efforts to trivialize a defendant's rights under *Miranda* by playing them down, or minimizing their legal significance, might suggest a "species of prohibited trickery" which weighs against a finding that a defendant's waiver is valid. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1237 (*Musselwhite*).)

In determining whether a confession is inadmissible, "[w]e must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained.' [Citations.] We apply federal standards in reviewing defendant's claim that the challenged statements were elicited . . . in violation of *Miranda*." (*People v. Bradford* (1997) 14 Cal.4th 1005, 1033.)

II.

Romero's Waiver of Miranda Rights Was Voluntary, Knowing, and Intelligent.

The evidence, consisting of a videotape and transcript of the police interview, was undisputed and demonstrated that Romero voluntarily, knowingly, and intelligently waived her rights under *Miranda* before speaking with police detectives and confessing to the murder of Gomez. At the outset of the interview, Detective Cabrera expressly twice told Romero they had a warrant for her arrest for murder. Detective Cabrera then gave all four *Miranda* warnings to Romero. After each warning, he asked whether she understood the right read to her. Each time, Romero answered affirmatively. Detective Fajardo told Romero of her right to counsel and that she would be provided an attorney if she could not afford one. Romero said she wanted to have an attorney present. At that point, the detectives left the interview room. When Detective Cabrera returned to the interview room, Romero, without prompting or urging, agreed to talk.

Detective Fajardo clarified the meaning and consequences of each of the *Miranda* warnings. For example, Detective Fajardo told Romero that if she wanted to talk without her attorney present, then “we continue[. I]f you say no . . . , I want my attorney first, no problem[,] we say no and we fill out your response and we move on and you get to talk to your attorney.” He explained to Romero, “[s]o if you want to continue[,] you need to answer my partner and say[,] yes I want to talk without my attorney here or you say[,] no I want to talk to my attorney first and then we [stop] and that’s it. You know it’s, it’s relatively easy. We’re not here to trick you it’s just plain and simple[.]” The detective’s explanations of Romero’s rights not only clarified those rights, but safeguarded them admirably.

In addition, Romero had been given *Miranda* warnings before when facing other charges. Her prior experience with *Miranda* warnings supports a finding that she understood and voluntarily, knowingly, and intelligently waived them in this case. (*Musselwhite, supra*, 17 Cal.4th at p. 1238 [holding that the importance of the defendant’s *Miranda* rights was not trivialized in part because of the defendant’s prior record of police encounters including two felony convictions]; *U.S. v. Glover* (9th Cir. 1979) 596 F.2d 857, 866 [reasoning that a defendant’s prior ““extensive dealings with the criminal process”” made him more likely to be familiar with *Miranda* rights].)

In conclusion, the evidence showed (1) Romero expressly and affirmatively stated she understood her *Miranda* rights, (2) Detective Fajardo gave her an explanation of the implications of each of those rights, and (3) Romero had been previously given *Miranda* warnings. Thus, Romero’s waiver of her *Miranda* rights was “the product of a free and deliberate choice” and was made “with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” (*Moran v. Burbine, supra*, 475 U.S. at p. 421.)

III.

The Police Detectives Did Not Trivialize Romero's Miranda Rights.

Romero asserts her waiver of rights under *Miranda* was invalid because Detectives Cabrera and Fajardo made comments that trivialized those rights. As the previous discussion demonstrates, Detectives Cabrera and Fajardo safeguarded Romero's rights rather than trivialized them.

In arguing the detectives trivialized her *Miranda* rights, Romero focuses on two comments taken out of context rather than examining the interview as a whole. Romero relies on two instances in which the detectives used the word "formality." After the *Miranda* warnings had been given, the following discussion took place in the interview room:

"Q [(Detective Cabrera)]: Okay I told you, you have a warrant for your arrest for murder[.]

"A [(Romero)]: Yeah I heard that[.]

"Q [(Detective Cabrera)]: Okay so do you want to talk to us[?]

"A [(Romero)]: (?) what murder?

"Q1 [(Detective Fajardo)]: It's a *formality* that we have to do because you got arrested. These guys took you out and picked you up[.]

"A [(Romero)]: Uh huh[.]

"Q1 [(Detective Fajardo)]: Because they filed a case against you, the law says we all have the same rights by the way. The law says that if you're in custody, they read you your rights. That's you know, you know when they say your rights, so you have to, it's your option to answer yes or no and to talk to us without representation, that's the whole purpose of that so I know you have questions just like we do, but we cannot go beyond this point[.]

"A [(Romero)]: Uh huh[.]

“Q1 [(Detective Fajardo)]: [U]nless you say yes I want to talk to you without my attorney present” (Italics added.)

The second time the detectives used the word “formality” was also in response to Romero’s confusion about which murder they were going to question her about. Within a few moments, the detectives left the interview room because Romero had invoked her right to counsel.

As the preceding material demonstrates, Detective Fajardo used the word “formality” in response to Romero’s questions about which murder they were talking about. His ultimate answer to those questions was that he could not divulge facts about the murder until she agreed to speak with him and Detective Cabrera. The formality to which Detective Fajardo referred was the need for Romero to expressly agree to talk before the detectives could speak to her about the murder. Although Detective Fajardo mentioned *Miranda* rights after using the word “formality,” he did so to explain to Romero why the detectives could not yet give her any more information.

In arguing that her *Miranda* waiver was invalid, Romero relies on two cases: *Musselwhite, supra*, 17 Cal.4th 1216, and *People v. Johnson* (2010) 183 Cal.App.4th 253 (*Johnson*). In *Musselwhite*, the California Supreme Court agreed with the proposition that evidence of police efforts to trivialize a defendant’s *Miranda* rights might under certain circumstances constitute a form of prohibited trickery. (*Musselwhite, supra*, at p. 1237.) The defendant contended the detectives engaged in such trickery by asking him, “[w]ell, we don’t know what you know and what you don’t know and so, what we’d like to do is just go ahead and advise you of your rights before we even get started and that way, that there’s no problem with any of it. Is that alright with you?” (*Id.* at p. 1234.) The detectives never used the word “technicality” or similar language to describe those warnings. (*Id.* at p. 1238.) The California Supreme Court held the detective’s comment did not trivialize the importance of the *Miranda* warnings, and, to

the contrary, “was an accurate statement of the office of the constitutionally derived *Miranda* warning” (*Id.* at p. 1237.)

In *Johnson, supra*, 183 Cal.App.4th at page 290, the detectives told the defendant that “before we get into [questioning] we have to . . . clear the *technicality*. We have to [read] you constitutional rights.” Although the detectives explicitly referred to *Miranda* warnings as a technicality, the Court of Appeal held that those warnings were not trivialized because the defendant fully understood his rights and knew the seriousness of the situation. (*Id.* at pp. 294-295.)

Neither *Musselwhite* nor *Johnson* supports Romero’s argument. The detectives in this case, like those in *Musselwhite*, fully and accurately gave Romero *Miranda* warnings and advised her of her rights. As we have explained, the detectives used the word “formality” to explain why they could not provide Romero more information about the crime for which she was being interviewed. The detectives said or did nothing that might be viewed as an attempt to trick Romero into waiving her rights under *Miranda* and talking to them. To the contrary, when Romero asserted her right to counsel, the detectives stopped the interview and left the room.

Unlike the situation in *Johnson*, Detectives Cabrera and Fajardo never used the word “technicality” or similar language when referring to the *Miranda* warnings. As in *Johnson*, Romero understood those rights. And, as in *Johnson*, she knew the seriousness of the situation. Romero had been arrested and brought into custody, she was being interviewed by two police detectives, and she had been told by the detectives they had a warrant for her arrest for murder.

Our independent review of the evidence leads us to conclude Romero voluntarily, knowingly, and intelligently waived her rights under *Miranda*. She understood those rights and the seriousness of the situation. The detectives did not trivialize those rights or engage in trickery to get her to waive them. Therefore, the trial court did not err by denying Romero’s motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.